

1160.12 and a new Section 1160.4 is added to read as follows:

§ 1160.4 Eligibility.

An indemnity agreement made under these regulations shall cover:

(a) Eligible items from outside the United States while on exhibition in the United States;

(b) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions; and

(c) Eligible items from the United States while on exhibition in the United States, in connection with other eligible items from outside the United States which are integral to the exhibition as a whole.

Example 1

Museum A, an American art museum, is organizing a retrospective exhibition which will include more than 150 works of art by the Impressionist painter Auguste Renoir. The exhibition will present the full range of Renoir's production for the first time ever in an American museum. Museums B and C, large national museums in Paris and London, have agreed to lend 125 major works of art illustrating every aspect of Renoir's career. Museum A is also planning to include related works from other American public and private collections which have not been seen together since the artist's death in 1919. Museums D and E, major east coast American art museums, have agreed to lend 25 masterworks by Renoir. The exhibition will open in Chicago and travel to San Francisco and Washington.

Discussion

Example 1 is a straightforward application of the amended indemnity regulations. Under the old regulations, only the works of art from Museums B and C, the foreign museums, would have been eligible for indemnification. Under the proposed Regulations, the works of art from American museums and other public and private collections also would be eligible for indemnification. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and whether the foreign loans are integral to the educational, cultural, historical or scientific significance of the exhibition. In this example, the Federal Council would likely approve indemnification of the entire exhibit.

Example 2

Museum A in Massachusetts is organizing an exhibition celebrating 250 Years of Decorative Arts in America, to be held in conjunction with the state's celebration of the millennium. Included among the objects to be borrowed from museums and historical societies in the United States are furniture, textiles, metalwork, ceramics, glass and jewelry, illustrating the best examples of American design from colonial times to the present. The curator traveled abroad recently and saw an exhibition of American quilts which have been acquired by a British

decorative arts museums. He intends to borrow several of the quilts for the exhibition.

Discussion

Example 2 raises the question as to whether the American museum organizing the exhibition has included the British-owned American quilts merely to obtain insurance relief. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and whether the foreign loans are integral to achieving its educational, cultural and historical purposes. Here, it is likely that the Federal Council will conclude that the foreign work are not an essential component of the exhibition. The Federal Council also may seek additional information from the applicant to determine whether the objectives of the exhibition could have been accomplished as satisfactorily by borrowing American quilts from U.S. collections. On these facts, the Federal Council in all likelihood would deny indemnification for the entire exhibition.

Example 3

Museum A, an American museum, is organizing an exhibition of the works of James Watkins, a nineteenth century American painter, focusing on his studies of human anatomy. Museum A has the foremost collection of preparatory drawings related to Watkins' major painting, "The Surgeon and His Students." The painting is in the permanent collection of Museum B, located in the south of France, which has agreed to lend the painting for the exhibition. The exhibition will be shown at Museum B after the U.S. tour. American Universities, C and D, have also agreed to lend anatomical illustrations and drawings which show Watkins' development as a draughtsman. The exhibition and accompanying catalogue are expected to shed new light on Watkins contributions to art and scientific history.

Discussion

Example 3 addresses the issue of whether the Federal Council will indemnify an exhibition even where the U.S. objects outnumber the foreign works. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and the relationship of the foreign loans to the educational, cultural, historical and scientific significance of the exhibition. In this example, the exhibition promises to make important contributions not only to the history of art but also to the history of science. While there is only a single foreign work of art, it is clearly an essential component of the exhibition as a whole. The case for indemnification of the entire exhibition is further strengthened by the fact that a foreign masterpiece, which is closely related to the preparatory drawings and anatomical illustrations and drawings owned by American institutions, will be made available to the American public. Thus, the mere fact that the U.S. loans outnumber the foreign works will not in itself disqualify the entire exhibition for indemnification.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 387

[Docket No. R-157]

RIN No. 2133-AB18

Utilization and Disposal of Surplus Federal Real Property for Development or Operation of a Port Facility

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule provides guidance for implementation by the Secretary of Transportation, acting by and through the Maritime Administrator, Maritime Administration (Secretary), of controlling regulations issued by the Administrator of General Services (Administrator), as authorized by Public Law 103-160. This rule prescribes the terms, reservations, restrictions, and conditions under which the Secretary will convey surplus Federal real property and related personal property to public entities for use in the development or operation of a port facility.

EFFECTIVE DATE: This rule is effective August 16, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Carman, Acting Chief, Division of Ports, Maritime Administration, MAR-830, Room 7201, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366-4357.

SUPPLEMENTARY INFORMATION: Due to the downsizing of the United States Government, surplus Federal real property and related personal property is becoming available which may be suitable for the development or operation of a port facility. Section 2927 of the National Defense Authorization Act for Fiscal Year 1994, enacted November 30, 1993, Public Law 103-160, amended Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) to provide that under such regulations as the Administrator, after consultation with the Secretary of Defense, may prescribe, the Administrator or the Secretary of Defense, in the case of property located at a military installation closed or realigned pursuant to a base closure law, may, in his or her discretion, assign to the Secretary for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for the development or operation of a port facility. The

Secretary of Transportation delegated the authority to convey such real and personal surplus Federal property to the Maritime Administrator (59 FR 36987, July 20, 1994). The Administrator has issued a final rule (60 FR 35706, July 11, 1995).

This rule establishes the terms, reservations, restrictions, and conditions of the conveyance, as required by Public Law 103-160, which are consistent with the controlling regulations at 41 CFR 101-47.308-10. Most of the terms, reservations, restrictions, and conditions used in this rule are found in other surplus Federal property conveyance program regulations of Federal agencies. The port facility definition is new and was developed by the Secretary to implement the conveyance program.

Rulemaking Analyses and Notices

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under Section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule would not significantly affect other Federal agencies; would not materially alter budgetary impacts; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in E.O. 12866, and has been determined to be a nonsignificant rule under the Department Regulatory Policies and Procedures. Accordingly, it is not considered to be a significant regulatory action under E.O. 12866. Since this is a matter relating to public property it is exempt from the notice requirements of the Administrative Procedure Act (5 U.S.C. 553 (a)(2)). Furthermore, it is necessary to finalize guidelines to facilitate and expedite the selection of the recipients of properties and the actual conveyance.

This rule has not been reviewed by the Office of Management and Budget.

Federalism

The Secretary has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Secretary certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Secretary has considered the environmental impact of this rulemaking and has concluded that the Secretary, as a sponsoring agency under the port facility conveyance, is not required to prepare an environmental assessment under the National Environmental Policy Act of 1969 (NEPA). The Secretary will insure that the reuse plan submitted by an applicant complies with the provisions of NEPA as prepared by the disposal agency.

Paperwork Reduction Act

This rulemaking contains a reporting requirement that is subject to the Office of Management and Budget (OMB) approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), as amended, and is being (or has been) submitted.

List of Subjects in 46 CFR Part 387

Government property management, Surplus Government property.

Accordingly, new 46 CFR Part 387 is added to read as follows:

PART 387—UTILIZATION AND DISPOSAL OF SURPLUS FEDERAL REAL PROPERTY FOR DEVELOPMENT OR OPERATION OF A PORT FACILITY

Sec.

- 12.1 Scope.
- 12.2 Definitions.
- 12.3 Notice of availability of surplus property.
- 12.4 Applications.
- 12.5 Surplus property assignment recommendation.
- 12.6 Terms, reservations, restrictions, and conditions of conveyance.

Authority: Pub. L. 103-160, 107 stat. 1933 (40 U.S.C. 484 (q))

§ 12.1 Scope.

This part is applicable to Surplus Property that is recommended by the Secretary as being needed for the development or operation of a Port Facility and is appropriate for being assigned to, or that has been assigned to the Secretary for conveyance as provided for in Public Law 103-160 and 40 U.S.C. 471 *et seq.*

§ 12.2 Definitions.

(a) *Act* means the Federal Property and Administrative Services Act of 1949 as amended, 40 U.S.C. 471 *et seq.*, and 41 CFR 101-47. Terms defined in the Act and not defined in this section have the meanings given to them in the Act.

(b) *Applicant* means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof, that has submitted an application to the Secretary to obtain surplus Federal property.

(c) *Disposal Agency* means the executive agency of the Government which has authority to assign property to the Secretary for conveyance for development or operation of a port facility.

(d) *Grantee* means the Applicant to which surplus Federal property is conveyed.

(e) *Grantor* means the Secretary.

(f) *Port Facility* means any structure and improved property, including services connected therewith, whether located on the waterfront or inland, which is used or intended for use in developing, transferring, or assisting maritime commerce and water dependent industries, including, but not limited to, piers, wharves, yards, docks, berths, aprons, equipment used to load and discharge cargo and passengers from vessels, dry and cold storage spaces, terminal and warehouse buildings, bulk and liquid storage terminals, tank farms, multimodal transfer terminals, transshipment and receiving stations, marinas, foreign trade zones, shipyards, industrial property, fishing and aquaculture structures, mixed use waterfront complexes, connecting channels and port landside transportation access routes.

(g) *Secretary* means the Secretary of Transportation acting by and through the Maritime Administrator, Maritime Administration by delegation of authority.

(h) *Surplus Property* means Federal real and related personal property duly determined to be unneeded by a Federal agency which may be conveyed to an Applicant for use in the development or operation of a port facility.

§ 12.3 Notice of availability of surplus property.

The Disposal Agency shall publish notices of availability of excess and surplus Federal real and personal property. The Secretary will advise eligible public port agencies, in an

appropriate manner, of the availability of Surplus Property that is deemed to have port facility potential. Potential Applicants shall notify the Secretary, in writing, of a desire to acquire surplus Federal property before the expiration of the notice period specified in the Notice of Surplus Property—Government Property.

§ 12.4 Applications.

Application forms for conveyance of Surplus Property can be obtained from the Maritime Administration, Division of Ports, 400 Seventh Street, SW, Washington, DC 20590. The applicant shall identify on the application form the requested property, agree to the terms/conditions of the conveyance and shall also submit a Port Facility Redevelopment Plan (PFRP) which details the plan of use for the property and the associated economic development plan.

§ 12.5 Surplus property assignment recommendation.

Before any assignment recommendation is submitted to the Disposal Agency by the Secretary the following conditions shall be met:

(a) The Secretary has received and approved an application for the property.

(b) The Applicant is able, willing, and authorized to assume immediate possession of the property and pay administrative expenses incidental to the conveyance (application preparation, documentation, legal and land transfer costs).

(c) The Secretary, after consultation with the Secretary of Labor, has determined that the property to be conveyed is located in an area of serious economic disruption.

(d) The Secretary, after consultation with the Secretary of Commerce, approves the PFRP as part of a necessary economic development program.

(e) The Secretary determines that the application complies with the provisions of the National Environmental Policy Act of 1969 as prepared by the Disposal Agency.

§ 12.6 Terms, reservations, restrictions, and conditions of conveyance.

(a) Conveyances of property shall be on forms approved by, and available from the Secretary, and shall include such terms, reservations, restrictions and conditions set forth in this part and such other terms, reservations, restrictions and conditions as the Secretary may deem appropriate or necessary.

(b) Property shall be conveyed by a quitclaim deed or deeds on an "as is,

where is" basis without any warranty, expressed or implied.

(c) Property shall be used and maintained in perpetuity for the purpose for which it was conveyed, and that if the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the Government, revert to the Government.

(d) The entire Port Facility, including all structures, improvements, facilities and equipment in which the deed conveys any interest shall be maintained at all times in safe and serviceable condition, to assure its efficient operation and use, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the useful life thereof, as determined by the Grantor.

(e) No property conveyed shall be mortgaged or otherwise disposed of, or rights or interest granted by the Grantee without the prior written consent of the Grantor. However, the Grantor will only review leases of five years or more to determine the interest granted therein.

(f) Property conveyed for a Port Facility shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without discrimination.

(g) The Grantee shall, insofar as it is within its powers and to the extent reasonable, adequately protect the water and land access to the Port Facility.

(h) The Grantee shall operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by Grantor, the port and all facilities thereon and connected therewith which are necessary to service the maritime users of the Port Facility and will not permit any activity thereon which would interfere with its use as a Port Facility.

(i) The Port Facility is subject to the provisions of Title 46 Code of Federal Regulations (CFR) Part 340.

(j) The Grantee shall furnish the Grantor such financial, operational and annual utilization reports as may be required.

(k) Where construction or major renovation is not required or proposed, the Port Facility shall be placed into use within twelve (12) months from the date of this conveyance. Where construction or major renovation is contemplated at the time of conveyance, the property shall be placed in service according to the redevelopment time table approved by the Grantor in the PFRP.

(l) The Grantee shall not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform or comply

with any or all of the terms, reservations, restrictions and conditions set forth in the application and the deed.

(m) The Grantee shall keep up to date at all times a Port Facility layout map of the property described herein showing:

(1) the boundaries of the Port Facility and all proposed additions thereto, and
(2) the location of all existing and proposed port facilities and structures, including all proposed extensions and reductions of existing port facilities.

(n) In the event that any of the terms, reservations, restrictions and conditions are not met, observed, or complied with by the Grantee, the title, right of possession and all other rights conveyed by the deed to the Grantee, or any portion thereof, shall, at the option of the Grantor revert to the Government, in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by Grantor or its successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, reservations, restrictions and conditions shall have been met, observed, or complied with, in which event said reversion shall not occur.

(o) The deed will contain a severability clause dealing with the terms, reservations, restrictions and conditions of conveyance.

(p) The Grantee shall remain at all times a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof.

(q) The Grantee shall comply at all times with all applicable provisions of law, including, the Water Resources Development Act of 1990.

(r) The Grantee shall not modify, amend or otherwise change its approved PFRP without the prior written consent of Grantor and shall implement the PFRP as approved by the Grantor.

(s) The Government under Section 120 (h)(3) of the Comprehensive, Environmental Response, Compensation and Liability Act of 1980, as amended, warrants that:

(1) all remedial action necessary to protect human health and the environment with respect to any hazardous substance on the property has been taken before the date of the conveyance, and

(2) any additional remedial action found to be necessary after the date of

the conveyance shall be conducted by the Government.

(t) The Government reserves the right of access to any and all portions of the property for purposes of environmental investigation, remediation or other corrective action and compliance inspection purposes.

(u) The Grantee shall agree that in the event, the Grantor exercises its option to revert all right, title, and interest in and to any portion of the property to the Government, or Grantee voluntarily returns title to the property in lieu of a reverter, the Grantee shall provide protection to, and maintenance of the property at all times until such time as the title is actually reverted or returned to and accepted by the Government. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in regulations implementing the Act.

(v) The Grantor expressly reserves from the conveyance:

- (1) oil, gas and mineral rights,
- (2) improvements without land,
- (3) military chapels, and
- (4) property disposed of pursuant to

204 (c) of the Act.

(w) The Government reserves all right, title, and interest in and to all property of whatsoever nature not specifically conveyed, together with right of removal thereof from the Port Facility within one (1) year from the date of the deed.

(x) The Grantee shall agree to maintain any portion of the property identified as "historical" in accordance with recommended approaches in the Secretary of Interior Standards for Historic Property at 16 U.S.C. 461-470w-6.

(y) Prior to the use of any property by children under seven (7) years of age, the Grantee shall remove all lead-based paint hazards and all potential lead-based paint hazards in accordance with applicable lead-based paint laws and regulations.

(z) The Grantee agrees that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration.

(aa) The Grantee shall agree that in its use and occupancy of the Port Facility it shall comply with all laws relating to asbestos.

(bb) All construction on any portion of the property identified as "wetlands" as determined by the appropriate District of the Army Corps of Engineers shall comply with Department of the Army Wetland Construction Restrictions contained in Title 33 CFR, Parts 320 through 330.

(cc) The Grantee shall agree to maintain, indemnify and hold harmless

the Grantor and the Government from any and all claims, demands, costs or judgments for damages to persons or property that may arise from the use of the property by the Grantee, guests, employees and lessees.

(dd) The Grantor, on written request from the Grantee, may grant release from any of the terms, reservations, restrictions and conditions contained in the deed, or the Grantor may release the Grantee from any terms, restrictions, reservations or conditions if the Grantor determines that the property so conveyed no longer serves the purpose for which it was conveyed.

(ee) The Grantor shall make reforms, corrections or amendments to the deed if necessary to correct such deed or to conform such deed to the requirements of applicable law.

Dated: August 10, 1995.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 081095A]

Atlantic Tuna Fisheries; Harpoon Boat Category Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Harpoon Boat Category Closure.

SUMMARY: NMFS closes the Atlantic bluefin tuna (ABT) fishery conducted by vessels permitted in the Harpoon Boat category. This closure is necessary since the annual quota for this category has been attained.

EFFECTIVE DATE: The closure is effective from 2330 hours local time on August 11, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, 301-713-2347 or Kevin B. Foster, 508-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) pertaining to harvest of Atlantic tunas by persons and vessels subject to U.S. jurisdiction appear at 50 CFR part 285.

Section 285.22(b) of the regulations provides for an annual quota of 47 metric tons of large medium and giant

size class ABT to be harvested from the Regulatory Area by vessels permitted in the Harpoon Boat category. The Assistant Administrator for Fisheries, NOAA (AA) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of ABT will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, ABT by the category of gear subject to the quotas.

Based on landing reports, the AA has determined that the quota of ABT allocated for the Harpoon Boat category for 1995 will be attained by August 11, 1995. Fishing for, retention, possession, or landing of large medium or giant size class ABT by vessels permitted in the Harpoon Boat category must cease at 2330 hours on August 11, 1995.

Classification

This action is taken under the authority of 50 CFR 285.20, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971-971h.

Dated: August 10, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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50 CFR Part 661

[Docket No. 950426116-5116-01; I.D. 080395B]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure From Sisters Rocks to Mack Arch, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Sisters Rocks to Mack Arch, OR, was closed at 12 midnight, July 25, 1995. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial quota of 1,200 chinook salmon for the area has been reached. This action is necessary to conform to the preseason announcement of the 1995 management measures and is intended to ensure conservation of chinook salmon.